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Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAY 15 2006

Federal Communications Commission  
Office of the Secretary

Arkansas Cable Telecommunications	)	
Association; Comcast of Arkansas, Inc.;	)	
Buford Communications I, L.P. d/b/a Alliance	)	
Communications Network; WEHCO Video,	)	
Inc.; and TCA Cable Partners d/b/a Cox	)	EB Docket No. 06-53
Communications,	)	
	)	File No. EB-05-MD-004
Complainants,	)	
	)	
v.	)	
	)	
Entergy Arkansas, Inc.,	)	
	)	
Respondent.	)	

To: Office of the Secretary  
Attn.: The Honorable Arthur I. Steinberg  
Administrative Law Judge

**OPPOSITION OF THE ENFORCEMENT BUREAU TO RESPONDENT'S  
MOTION TO ENLARGE, CHANGE AND DELETE ISSUES  
PRESENTED IN THE HEARING DESIGNATION ORDER**

Pursuant to section 1.294(c) of the Commission's rules, 47 C.F.R. § 1.294(c), the Enforcement Bureau ("Bureau") respectfully submits this opposition to the Respondent Entergy's Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order ("Motion").<sup>1</sup> Entergy's request to change issue 4(c) should be denied. In order to accommodate the Entergy's concerns regarding the breadth of issue 4(c), however, the Bureau proposes a modification to ensure that issue 4(c) is sufficiently narrow in scope to limit

<sup>1</sup> Entergy Arkansas, Inc. Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order, (continued....)

consideration of Entergy's electric operation practices only to those practices that relate to the Complainants.<sup>2</sup>

Issue 4(c) presently reads as follows:

To determine whether Entergy has installed electric facilities out of compliance with the NESC and/or Entergy's own standards, and if so, whether it has unreasonably attempted to hold Complainants responsible for costs associated with correcting those conditions.<sup>3</sup>

Entergy proposes issue 4(c) be revised to read as follows:

To determine whether Complainant's attachments are out of compliance with the NESC and/or EAI's standards, and if so, what would be a reasonable method of determining responsibility for correction.<sup>4</sup>

The Bureau does not agree with Entergy's proposed language because it clouds consideration of which out-of-compliance conditions are relevant to this dispute, *i.e.*, those conditions caused by Entergy. Entergy's proposed issue 4(c) also fogs the question of liability by removing the straightforward inquiry of "whether [Entergy] has unreasonably attempted to hold Complainants responsible for costs associated with correcting [conditions not caused by the Complainants]," and replacing it with a vague consideration of "a reasonable method of determining responsibility for correction."<sup>5</sup> Accordingly, Entergy's proposed revision should be rejected.

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(...continued from previous page)

EB Docket No. 06-53, File No. EB-05-MD-004 (filed May 4, 2006).

<sup>2</sup> See *Arkansas Cable Telecommunications Association; Comcast of Arkansas, Inc.; Buford Communications I, L.P. d/b/a Alliance Communications Network; WEHCO Video, Inc.; and TCA Cable Partners d/b/a Cox Communications v. Entergy Arkansas, Inc.*, Hearing Designation Order, DA 06-494 (rel. Mar. 2, 2006), Erratum (rel. Mar. 6, 2006) ("HDO").

<sup>3</sup> HDO at para. 18, issue 4(c).

<sup>4</sup> Motion at 4.

<sup>5</sup> Motion at 4.

The intended focus of issue 4(c) is to address the reasonableness of Entergy's alleged attempts to charge the Complainants for out-of-compliance electric facilities installed by Entergy<sup>6</sup> – a question within the Commission's jurisdiction over the justness and reasonableness of rates, terms, and conditions of pole attachments under section 224.<sup>7</sup> Entergy correctly notes that issue 4(c) "is ultimately directed at determining responsibility where conditions on a given pole are non-compliant with applicable safety and engineering standards and, consequently, which party should bear the costs associated with correcting the conditions on that pole."<sup>8</sup>

According to Entergy, issue 4(c), as written, requires the ALJ to perform an initial step of reviewing *all* of Entergy's facilities for out-of-compliance conditions.<sup>9</sup> Entergy argues that the broad wording of issue 4(c) necessarily invokes a wholesale survey of Entergy's entire electric operations, a review outside of the Commission's jurisdiction under section 224.<sup>10</sup> Issue 4(c) is only intended, however, to address those out-of-compliance electric facilities, installed by Entergy, that Entergy has "attempted to hold the Complainants responsible for [correcting]."<sup>11</sup> Accordingly, in order to address this concern, the Bureau proposes the following revision to issue 4(c):

To determine whether, on the Entergy poles to which Complainant's facilities are attached, Entergy has installed electric facilities out of compliance with the NESC

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<sup>6</sup> HDO at para. 18, issue 4(c).

<sup>7</sup> 47 U.S.C. §§ 224(b), (f).

<sup>8</sup> Motion at 3-4. See Arkansas Cable Telecommunications Association; Comcast of Arkansas, Inc.; Buford Communications I, L.P. d/b/a Alliance Communications Network; WEHCO Video, Inc.; and TCA Cable Partners d/b/a Cox Communications Opposition to Respondent's Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order, EB Docket No. 06-53, File No. EB-05-MD-004 (filed May 12, 2006) ("Opposition") (arguing that the purpose of issue 4(c) is to determine whether "Entergy's own engineering and construction practices force unreasonable costs and other terms and conditions on Complainants").

<sup>9</sup> Motion at 2-3.

<sup>10</sup> Motion at 2 (arguing that issue 4(c) "requires the ALJ to make determinations related to wholly electric operations and practices outside of the scope of the FCC's jurisdiction under the Pole Attachments Act").

<sup>11</sup> HDO at para. 18, issue 4(c).

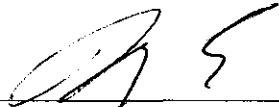
and/or Entergy's own standards, and if so, whether Entergy has unreasonably attempted to hold Complainants responsible for costs associated with correcting those conditions.

### **CONCLUSION**

Based on the foregoing, the Bureau proposes that issue 4(c) be modified in accordance with the Bureau's proposed language to clarify that the ALJ's consideration of Entergy's facilities is limited only to the extent those facilities relate to the Complainants.

May 15, 2006

Respectfully submitted,



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**CERTIFICATE OF SERVICE**  
**EB Docket No. 06-53**  
**FILE NO. EB-05-MD-004**

**I, Michael Engel, do hereby certify that on this, the 15th day of May 2006, I served a copy of the foregoing OPPOSITION OF THE ENFORCEMENT BUREAU TO RESPONDENT'S MOTION TO ENLARGE, CHANGE AND DELETE ISSUES PRESENTED IN THE HEARING DESIGNATION ORDER on the following:**

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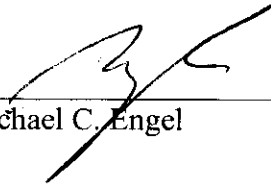
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